



MULTISTATE TAX COMMISSION

*Working together since 1967 to preserve federalism and tax fairness*

To: Executive Committee  
From: Joe Huddleston  
Date: June 3, 2011  
Subject: Report of the Executive Director

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This report is a summary of the Commission's organizational and staff activities for the period July 1, 2010 through May 15, 2011 (unless otherwise noted).

## I. Programs & Activities

### A. Joint Audit Program

The audit division completed 2 income tax audit and parts of 4 other income tax audits as of May 15, 2011. The audit division also completed 5 sales tax audits as of May 15, 2011. There are currently 24 income and 28 sales tax audits in progress. Proposed assessments as of May 15, 2011 from these audits total \$50,480,083.

The following chart summarizes hourly data for completed audits through May 15 for fiscal year end June 30, 2011:

|                                | <b>Income &amp; Franchise</b> | <b>Sales &amp; Use</b> | <b>Total</b> |
|--------------------------------|-------------------------------|------------------------|--------------|
| <b>Total Audits</b>            | 2                             | 5                      | 8            |
| <b>Total States Audited</b>    | 68                            | 65                     | 133          |
| <b>Total Hours</b>             | 6111                          | 7120                   | 13,231       |
| <b>Average Hours per State</b> | 90                            | 110                    | 99           |

Aside from the meetings of the Audit Committee, states in numerous audits have met with staff via teleconferences to discuss particular audits in progress and issues specific to those audits.

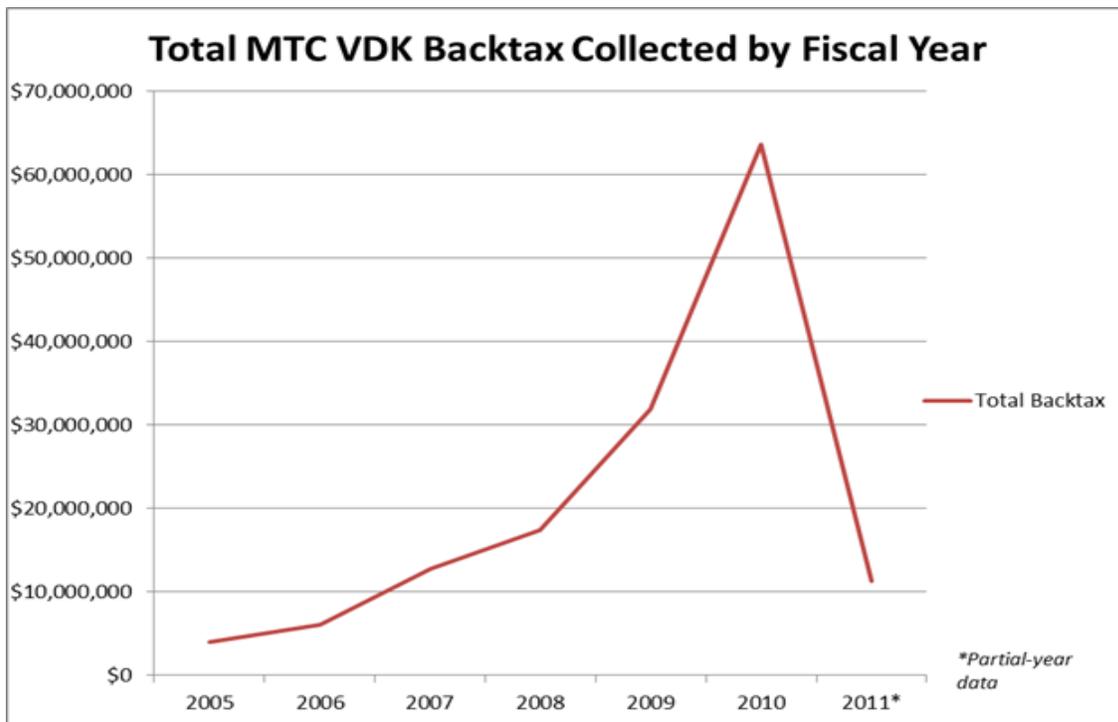
Audit division staff provided instruction at two income tax training classes: one statistical sampling class and one computer assisted auditing class.

## B. National Nexus Program

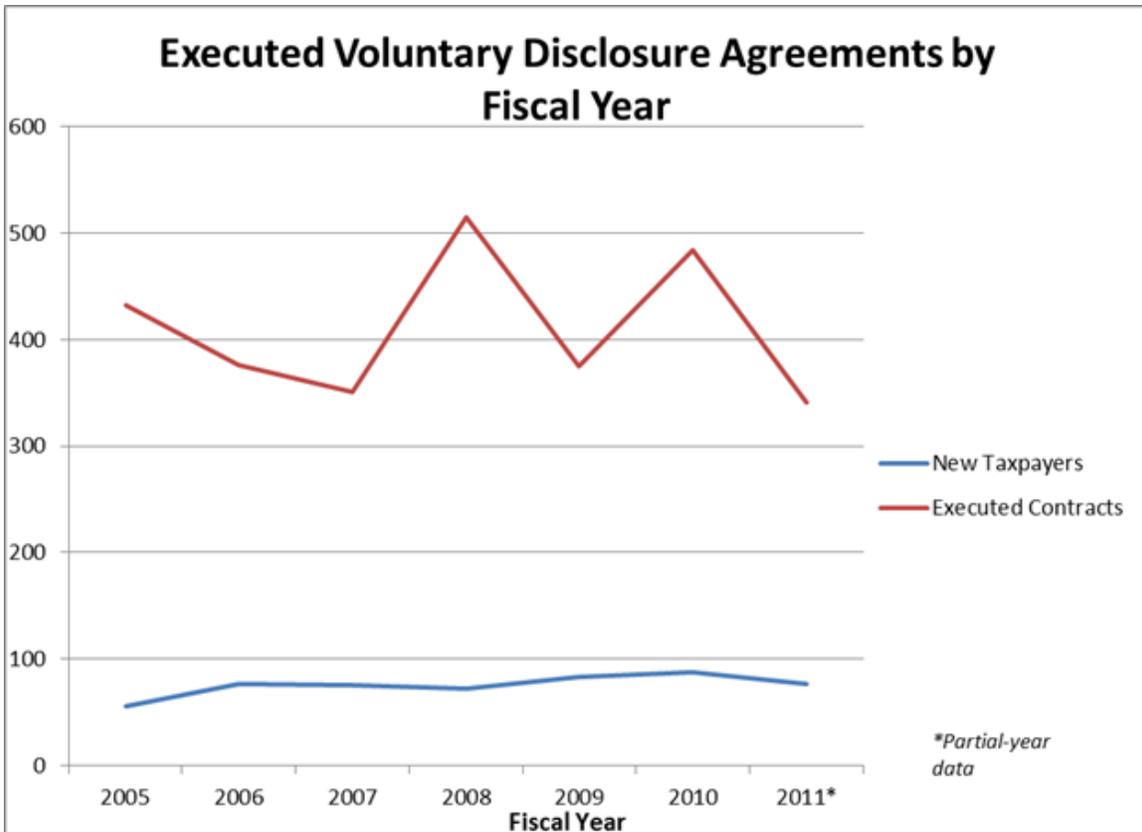
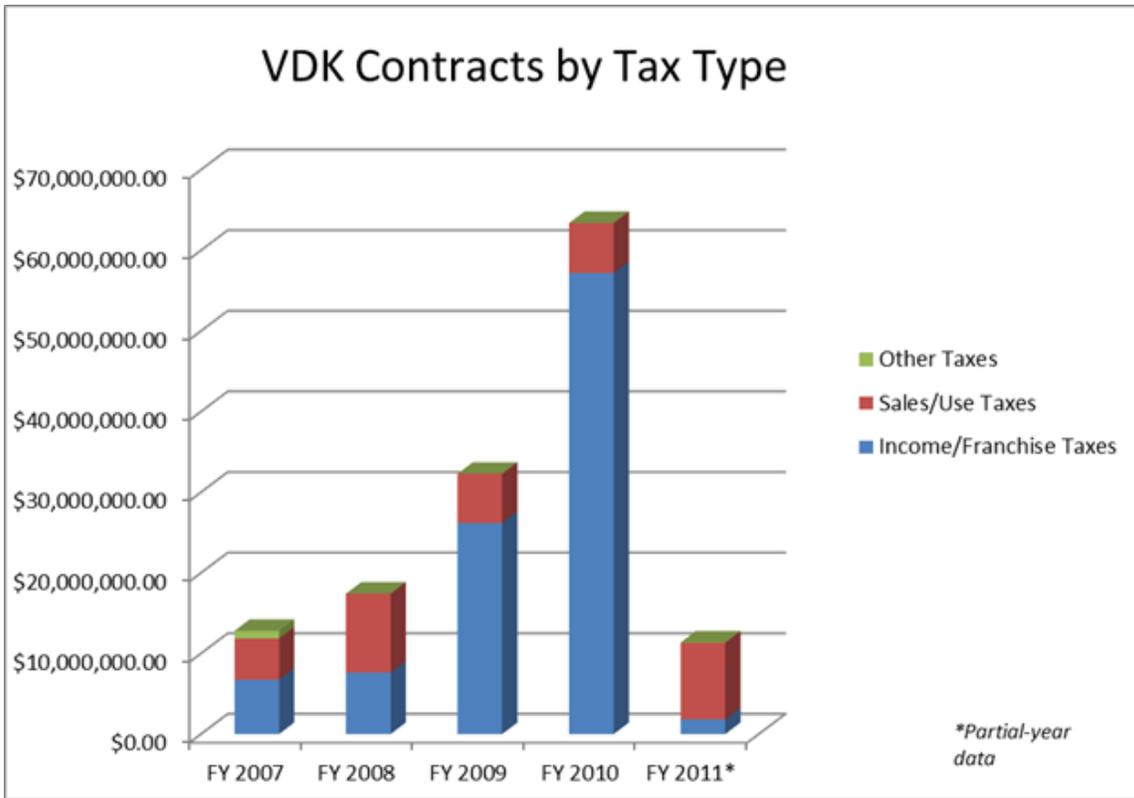
The National Nexus Program has opened 76 new voluntary disclosure Files and executed 341 individual contracts. The average contract value in FY 2011 is \$33,304.72. \$11,356,909 has been collected for the states thus far in this fiscal year.<sup>1</sup>

FY 2011 will likely have revenue similar to that of FY 2008, which was substantially lower than that of FY 2009 and FY 2010. FY 2009 and 2010 revenue was unusually large due primarily because of a single taxpayer. Such large taxpayers come along unpredictably and cause large spikes in revenue. Comparing FY 2011 revenue to date to most previous years, however, reveals a very productive program.

Something interesting to note about FY 2011 thus far is that collections from sales & use tax predominate, in contrast to prior years when there was either a rough parity or income tax predominated due to the single large taxpayer. The graphs below present this information graphically.



<sup>1</sup> The collection amount includes only back tax actually collected (cash basis). It may also contain a trivial amount of penalty, interest, and miscellaneous fees if they were collected before conclusion of the voluntary disclosure. It does not include any tax, interest, penalty, or other thing of value collected after the voluntary disclosure process ended. States almost always collect substantial interest on back tax amounts after the end of the voluntary disclosure process, but the Commission does not include these amounts in its reports.



The Nexus Program continues to respond to frequent requests from tax practitioners, taxpayers, and occasionally states, regarding nexus. This information is provided by telephone.

Nexus Program staff provided instruction at two nexus schools during this period. Staff had updated a portion of the material in advance of each school and will continue to update it into the future to ensure accurate and complete information for students.

### **C. Legal**

The legal division staffs two standing committees: Uniformity and Litigation. The division also holds regular state tax attorney teleconferences; files amicus briefs in state and federal courts; participates as speakers at conferences, symposiums and institutes; and teaches MTC training courses. The legal division provides individual state support by assisting in state litigation and reviewing states' draft statutes, regulations, and legal briefs. The division also provides legal support for the Commission's audit division, training division, and general administration.

#### Uniformity Work

The legal division staffed nine uniformity projects during this period:

- *Amendments to MTC Model Financial Institutions Apportionment Rule* (under development by a Uniformity Committee Work Group)
- *Amendments to Compact Art. IV and UDITPA* (under development at Uniformity Committee)
  - Definition of "sales" (Compact Art.IV(1)(g))
  - Sales factor sourcing (Compact Art.IV.17)
- *Amendments to Model Combined Reporting Statute Water's-Edge Tax Haven Provision* (pending executive committee action on hearing officer's report and recommendations)
- *Model Statutes for Telecommunications Transaction Tax Centralized Administration* (under development at Uniformity Committee)
- *Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax* (pending executive committee action on hearing officer's report and recommendations)
- *Model Sales & Use Tax Notice and Reporting Statute* (pending executive committee action on hearing officer's report and recommendations)

- *Model Mobile Workforce Withholding and Individual Income Tax Statute* (undergoing bylaw 7 survey)
- *Model Add-back Statute to Address Captive REITs* (undergoing bylaw 7 survey)
- *Model Statute on the Tax Collection Procedures for Accommodations Intermediaries* (Executive Committee referred back to Uniformity Committee after failure to pass bylaw 7 survey)

#### Litigation Committee Work

The legal division supported the Litigation Committee by organizing and making presentations for the July, 2010, and March, 2011 in-person meetings. In addition, the division organized six state tax attorney teleconferences which were very well attended by representatives from approximately 40 states.

#### Legal Assistance to States

The legal division consulted with individual states regarding significant on-going litigation strategy and briefs, draft legislation, and draft regulations. We participated in various moot courts. The following *amicus curiae* briefs are in drafting or have been filed this fiscal year:

- *CSX Transportation, Inc. v. Alabama Department of Revenue*, USSC No. 09-520 \_\_\_\_\_ U.S. \_\_\_\_\_(2011) (Remanded)
- *Equifax, Inc. and Equifax Credit Information Services, Inc. v. Mississippi State Tax Commission*, Mississippi Supreme Court No. 2010-TS-01857 (to be filed June 16, 2011)
- *The Gillette Company et al. v. California Franchise Tax Board*, (appeal filed December 2, 2010, 1st App.Dist., Div. 4, Case No. A130803), (to be filed September 5, 2011)

#### Commission Support

During this fiscal year, the legal division provided support for the Commission's general administration by addressing open meetings issues, records requests, researching and making recommendations for record retention policies, and filing corporate registrations and reports. The division provided legal assistance to the Commission's audit division on a number of challenging audit related procedural and substantive issues. The legal division (along with the National Nexus Program) taught at MTC nexus schools in Helena, Montana, and Denver, Colorado. Division staff also taught Corporate Income Tax and Combined Reporting Training in Columbus, South Carolina; Birmingham, Alabama; and Boston, Massachusetts. The division monitored and reported

on the activities of the Streamlined Sales and Use Tax Governing Board and its Committees. In addition, the division assisted in communicating the Commission's position on bills before Congress, including BATSA, VoIP, Mobile Workforce, Main Street Fairness (Streamlined Sales Tax), and others.

#### **D. Policy Research**

*MTC Project on Revising Model Statute on Apportioning Income of Financial Institutions* — The policy research director continues to work with other MTC staff, state revenue agency personnel, and industry representatives to develop model apportionment statute, and otherwise provide support for this project.

*Administration of Telecommunications Transaction Taxes* — The policy research director is assisting the Sales & Use Tax Subcommittee of the Uniformity Committee with their project of developing models of centralizing administration of local telecommunications transactions taxes.

*Support for MTC federal legislative response efforts* — The policy research director has worked with other MTC staff and Patuxent Consulting in preparing responses to federal legislation with state business tax implications.

#### *Multistate Tax Commission Review* —

- Production of winter 2011 issue of the *Review*.
- Wrote article on State Corporate Tax Bases during the Recession.
- Edited article by Ken Beier on FCC National Broadband Plan.
- Edited a response by Joe Huddleston to OECD on taxation of intangible capital.
- Production of spring 2011 issue of the *Review* in progress.
- Wrote article on State Corporate Tax Bases during the Recession.
- Edited article by Professor Tracy Gordon on State and Local Government Finances.
- Wrote companion article to Prof. Gordon's article.
- Edited a letter by Joe Huddleston to Secretary of the Treasury Timothy Geithner on Corporate Tax Reform in a Time of Fiscal Crisis.

#### *Other Activities* —

- Organized session at FTA Revenue Estimating Conference in Sun Valley, Idaho on incidence of state and local taxes initially imposed on business, September 2010.
- Working with Census Bureau personnel (Governments Division) on improving quarterly estimates of state/local taxes; and, revising definitions of state/local taxes initially imposed on businesses and contents of 2012 Census of Governments; discussed a paper by Brian Zamperini and Marcus Graham at a session organized by Governments Division at annual National Tax Association meeting in November 2010.

- Organized meeting of Tax Economists Forum on State Fiscal Conditions December, 2010.
- Organized second meeting of Tax Economists Forum on State Fiscal Conditions February, 2011.
- Monitor state adoption of MTC model statutes, regulations, and guidelines.

#### **E. Training**

The Training staff supported the following training activities since July 1, 2010:

- *Corporate Income Tax Course*

October 12-13, 2010, in Columbia, South Carolina, for 24 students from the South Carolina Department of Revenue.

March 14-16, 2011, in Boston, Massachusetts, for 102 students—95 from the Massachusetts Department of Revenue and 7 additional students from Idaho, Indiana, and Vermont.

- *Nexus School*

October 26-27, 2010, in Helena, Montana, for 27 students from Alaska, Montana, South Carolina, and Wisconsin.

May 11-12, 2011, in Denver, Colorado, for 52 students—35 from Colorado and 17 additional students from Alaska, Idaho, Louisiana, Minnesota, North Dakota, Washington, and West Virginia.

- *Statistical Sampling for Sales and Use Tax Audits*

March 28-31, 2011, in Chicago, Illinois, for 8 students—7 from the private sector and 1 student from North Dakota.

- *Computer Assisted Audit Training Using Excel*

May 17-18, 2011 in Cheyenne, Wyoming, for 21 students—16 from the Wyoming Department of Audit and 5 from Colorado.

In addition, the following training events were held for state and MTC staff:

- *Federal Schedule UTP (Uncertain Tax Position Statement)*  
March 3, 2011 in Kansas City, Missouri (in conjunction with MTC committee meetings), for 40 state participants.
- *Corporate Income Tax Training*  
May 10-12, 2011, in Chicago, Illinois, for MTC income tax audit staff.

Discussions are underway with several states regarding scheduling of courses. This will be affected by the availability of funding and the priorities of new state administrations that take office in January.

The director of training coordinated the July 28 Annual Meeting Conference. He also wrote article on Federal Communications Commission Broadband Plan, Broadband Deployment Encounters State and Local Taxation, for the next issue of the *MTC Review*.

We have renewed our certification with the National Association of State Boards of Accountancy (NASBA) as a CPE sponsor.

## **II. Administration**

Shan Chen, policy research intern, has accepted a full time position with the International Monetary Fund as of November 15, 2010.

TaxNet Governmental Communications Corporation (TGCC), was a joint effort of the MTC and FTA. Last year, the TGCC board approved distribution of the funds currently residing in the TGCC bank account equally between FTA and MTC, with each organization remaining subject to any restrictions on the subsequent spending of those funds based upon the TGCC bylaws. They also approved dissolution of TGCC upon distribution of the funds and payment of any fees or costs involved. The Executive Committee reviewed the actions of TGCC and consented to the approved course of action at its meeting in December 2010.

### Recommendation to suspend activities of the Technology Committee

In July of 2000, the Commission established the Technology Committee to advise the Commission on “plans to use information technology to advance the purposes of Multistate Tax Compact” and the development of systems that would link the Commission and its member states. The Technology Committee reports to the Executive Committee and serves to provide general oversight to Commission technology efforts.

After implementation of the website in 2006, Technology Committee participation dwindled despite periodic efforts by the chairs to bolster participation and interest. Since December of 2008, the committee has had few active participants; many teleconferences and meetings consisted of the committee’s chair and MTC staff. The committee has had two vacancies in its chair (the first from February to December, 2010; the second from March to the present).

Nevertheless, the committee has been an invaluable source of advice and input with respect to internal technology issues and projects. But this advice and input does not need a committee structure to continue – interaction among Commission technology staff with counterparts in the states can profitably occur in other avenues, such as the FTA

technology conference each year. In addition, a technology report addendum to this report would serve the function of providing information about the Commission's technology efforts to the Executive Committee. The Technology Committee could be revived in the future by the Executive Committee if it was needed.

My recommendation is to suspend the activities of the Technology Committee indefinitely and require a technology report as an addendum to each executive director report provided to the Executive Committee during the time the Technology Committee is inactive.

### **III. Presentations**

The following are the programs, conferences, and other events of outside organizations at which members of the staff represented the Commission during the reporting period:

#### JULY

- BNA Webinar, Sales and Use Tax Notice and Reporting Requirements (Sicilian)
- Southeastern Association of Tax Administrators, Little Rock, Arkansas (Huddleston)

#### SEPTEMBER

- North Eastern States Tax Officials Association; Boston, Massachusetts (Matson, Sicilian)
- KPMG Payroll Forum; Chicago, Illinois (Sicilian)

#### OCTOBER

- COST Annual Meeting, Phoenix, Arizona (Huddleston)
- AICPA Tax Division State & Local Taxation Technical Resource Panel; Washington, D.C. (Matson, Sicilian)
- Chicago Tax Club; Rosemont, Illinois (Huddleston)

#### NOVEMBER

- Georgetown University Law Center SALT Certificate Program Meeting; Washington, D.C. (Huddleston)
- California Tax Policy Institute; San Diego, California (Huddleston, Sicilian)
- Hartman State and Local Tax Forum; Nashville, Tennessee (Fort)
- Michigan Tax Conference; Detroit, Michigan (Sicilian)
- Institute for Professionals in Taxation; Miami, Florida (Shimkin)
- New Jersey Society of Certified Public Accountants; Roseland, New Jersey (Shimkin)
- NCSL Task Force Meeting; Scottsdale, Arizona (Huddleston)
- NTA Annual Conference on Taxation; Chicago, Illinois (Dubin)

DECEMBER

- Graduate Accounting Program Guest Lecturer, American University, Washington, D.C. (Huddleston)
- New York University State & Local Tax Institute, New York, New York (Huddleston, Fort)

JANUARY

- Cornell State & Local Tax Group Luncheon, New York, New York (Shimkin)
- 20th Annual Ohio Tax Conference Columbus, Ohio (Huddleston)

FEBRUARY

- Deloitte and Florida Bar Tax Section's National Multistate Tax Symposium, Orlando, Florida (Huddleston, Matson)
- New York University State & Local Tax Group Luncheon, New York, New York (Huddleston)
- FTA-MTC New Commissioners Seminar, Dallas, Texas (Huddleston, Matson, Sicilian)

MARCH

- MTC Corporate Income Tax Training, Boston, Massachusetts (Sicilian)
- ABA/IPT Sales and Use Tax Conference, New Orleans, Louisiana (Huddleston, Sicilian)

APRIL

- Morrison & Foerster's State & Local Roundtable Lunch Session, New York, New York (Huddleston)
- Deloitte Multistate Tax Summit, Chicago, Illinois (Koenig)
- Ernst & Young's 6<sup>th</sup> Annual Domestic Tax Conference, New York, New York (Huddleston)

MAY

- MTC Nexus School, Denver, Colorado (Laskin)
- Michigan Tax Conference, Plymouth, Michigan (Fort)
- Georgetown State and Local Tax Conference, Washington, D.C. (Fort)
- COST Annual Spring Audit Meeting, Bernalillo, New Mexico (Fort)